

THE WHITE HOUSE
WASHINGTON

October 27, 1998

Tom Bliley
Chairman
Committee on Commerce
U.S. House of Representatives
Room 2125, Rayburn House Office Building
Washington, D.C. 205 15-6115

Dear Chairman Bliley:

This letter is a preliminary response to your inquiry of October 15 concerning the Administration's role in the transfer of the Internet's Domain Name System (DNS) from the public sector to the private sector. If after reading this response, you desire further information, I will forward it to you by your requested date of November 5.

Before addressing your specific questions, it would perhaps be useful to describe to you the process which we have undertaken since July 1, 1997, when the President directed the Commerce Department to oversee the transition of the DNS to the private sector.

In the Presidential directive on electronic commerce issued on July 1, 1997, the President stated:

"I direct the Secretary of Commerce to support efforts to make the governance of the domain name system private and competitive and to create a contractually based self-regulatory regime that deals with potential conflicts between domain name usage and trademark laws on a global basis."

In his directive, the President created an interagency working group to oversee the implementation of the various parts of his electronic commerce strategy. As a coordinator of this group, I have supervised the interagency process which has overseen the Commerce Department's DNS efforts.

On July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration. During the comment period, more than 430 comments were received, amounting to some 1,500 pages.

Informed by these comments and other broad consultations, on January 30, 1998, the Department of Commerce issued for comment “A Proposal to Improve the Technical Management of Internet Names and Addresses” also known as the Green paper. It made proposals to privatize the management of Internet names and addresses. The Department received more than 650 public comments from around the world on the proposal, amounting to over 2000 pages.

In response to these comments and reflecting the rapid pace of technological development of the Internet, the Department issued on June 5, 1998 its plan, “Management of Internet Names and Addresses” (also known as the White Paper). The White Paper invited the international community of private sector Internet stakeholders to work together to form a new corporation by October 1 to manage DNS functions currently performed by or on behalf of the U.S. Government. These functions include 1) management of the Internet IP numbering system; 2) coordination and management of the Internet root server system; 3) allocation and management of generic top level domains; and 4) coordination of Internet protocol assignments.

In keeping with the principles of the President’s electronic commerce strategy, the White Paper states that the new corporation should be a private, non-profit, globally and functionally representative organization, operated on the basis of sound and transparent processes that protect against capture by self-interested factions. It further states that the new corporation’s processes need to be fair, open and pro-competitive, and should have mechanisms for restructuring itself to reflect changes in the constituency of Internet stakeholders.

The White Paper also sets conditions for negotiations between the Commerce Department and Network Solutions, Inc. (NSI), a private company which manages certain aspects of the DNS for the Government, designed to end the NSI monopoly in the registration of second level domain names in generic top level domains. It also calls upon the World Intellectual Property Organization (WIPO) to conduct a study to be presented to the new organization on the proper way to handle trademark issues related to the DNS.

Finally, the White paper indicates that the U.S. Government would continue its oversight of the DNS for a transition period not to exceed two years and that the Government would consult with other interested governments during the process of forming the new corporation and during the period of oversight.

The Department of Commerce has completed its negotiations with NSI and an amendment to the cooperative agreement between the U.S. Government and NSI, which accomplish the goals laid out in the White Paper, and was announced on October 6.

WIPO has begun its study and has indicated that it will be prepared to report to the new corporation early in 1999.

The White Paper’s principles and process won widespread support from the Internet community worldwide. Immediately after it was issued, at least two different efforts were initiated to respond to it. One process was initiated by the Internet Assigned Numbers Authority

(IANA), the group at the University of Southern California which now performs some of the DNS functions under contract with the Defense Advanced Research Projects Administration (DARPA). The other process, the International Forum for the White Paper (IFWP) was initiated by NSI, The Domain Name Rights Coalition (DNRC), the Commercial Internet Exchange (CIX) and a number of other companies and associations.

The IANA process consisted of solicitations of views on the Internet and negotiations with various groups on five successive drafts of proposed bylaws for the new corporation. The IFWP process consisted of a series of public meetings chaired by Professor Tamar Frankel from Boston University and coordinated by a steering group. These meetings were held throughout the summer in Reston, Geneva, Singapore and Buenos Aires. In addition, a meeting convened by the European Union in conjunction with this process was held in Brussels.

The Administration encouraged both processes and we would have encouraged other processes initiated by private stakeholders had they emerged. We did not see it as our role to define any specific process as being legitimate. Advocating private sector leadership to us meant allowing the private sector to lead, even if this meant competing processes for a period of time.

Those organizing the IANA process felt that the IFWP process was not sufficiently democratic because it gave undo weight to those who had the time and money to attend meetings around the world, a possibility not open to many Internet stakeholders. They argued that a process of successive drafts publicly posted on the Internet with opportunities for public comment was more democratic.

Those organizing the IFWP process argued that the meetings were more democratic because no one group controlled the drafting pen and the give and take of meetings and associated discussions on line provided for a more open process.

We did not see it as our role to shut off one process or the other. Instead, we encouraged those organizing each process to cooperate with each other as much as possible. We encouraged those associated with the IANA process to attend the IFWP meetings, and I believe that representatives from the IANA group and those associated with it did attend all the meetings. We also encouraged those organizing the IFWP process to respond to the IANA drafts and I believe that many did do so.

I spoke at two of the IFWP meetings, reiterating the principles of the White Paper and urging that consensus be reached. I responded to phone calls and meeting requests I received from representatives of both groups and from a variety of other participants in the process. As expressed in the White Paper, I also had periodic conversations with representatives from other interested governments who requested to participate in the process. These included the European Union, France, Great Britain, Australia and Japan.

In late August, I was informed that the IFWP group was divided on whether to hold a wrap up meeting to summarize its work and produce a proposal. I gather that a vote taken on this possibility at one of their meetings produced a slight majority against the idea of a wrap up

meeting. I was also informed that some people associated with IFWP wanted to hold a meeting at Harvard University in mid September to culminate the process and hammer out a final agreement. Tamar Frankel requested that I come to the meeting and put the US Government on record as officially sanctioning that meeting as the process we would recognize.

Others, including some who had been sponsors of the IFWP process such as CIX, opposed the idea of such a meeting, preferring to negotiate with IANA to incorporate into its latest draft the consensus points of the IFWP meetings.

Those favoring a big public meeting felt that it would be more democratic. Those opposing the idea of a meeting felt that a large discussion forum of that sort was not the best way to draft a final set of bylaws and that the location of any such meeting would inherently bias the results since those who lived closest to the meeting site would have the greatest representation.

The Administration decided not to endorse one view or the other. Instead, we urged the groups to talk with each other and to try to reach consensus. We left it to them to decide whether this would occur in a big meeting or not.

From talking to the various parties involved, and reading the various lists on which groups were communicating with each other, we felt that consensus could be reached. There appeared to be agreement on 80% of the issues, a consensus which had been formed over the past months. The areas of disagreement were serious, but we believed could be negotiated.

While encouraging the groups to talk with each other, we understood that there could be one of two outcomes, either of which would provide the basis for a next step. There might emerge a consensus proposal because the existence of the deadline would force the groups to come together. If not, we would receive two or three proposals representing the consensus of different groups and we could then put together a process to reconcile differences after taking the pulse of the Internet community.

The latter has been the result. From the vast array of factions and proposals which existed last June, we now have three proposals which follow from the White Paper (and one proposal which rejects the White Paper principles and process and has little support in the public comments). These proposals agree on most of the fundamental issues, There are serious areas of disagreement, but we believe, having talked at length with the proposing groups, that these differences can be bridged.

The public comments we have received, numbering over 500 pages, provide the guidelines for these discussions. We have sent letters to the three groups that have made proposals expressing the consensus of the public comments and have encouraged them to engage in discussions to reach a satisfactory conclusion based on the public comments.

Most of the public comments support moving ahead with the ICANN group, but most also support many of the concerns voiced in the other proposals about the insufficient accountability, transparency, and protections against conflicts of interest in the ICANN proposal.

If these and some other modifications are made in the ICANN proposal, we believe that there will be sufficient consensus to move ahead:

As with many issues relating to the new digital economy, there are no established templates to follow on how to set up an organization to coordinate the DNS system. While this process has had many twists and turns, there has been significant progress. Even after the Commerce Department enters into a transition agreement with a new organization, there will be many difficult decisions and consensus building processes which will be necessary before that organization attains legitimacy and stability. The U.S. Government will have an important oversight role to play during this transition. The Administration will be pleased to work with you and your committee as we proceed through this difficult and uncertain process.

With this introduction, I will now turn to your specific questions.

1. The Commerce Department will respond to this question since it involves authorities of the Commerce Department.

2. As indicated above, after the White Paper was issued, IANA expressed an interest in submitting a proposal to meet the objectives of the White Paper process. In a few phone calls with Jon Postel and others from IANA in June, I encouraged them to do so, indicating that they should try to consult widely and achieve as broad based a consensus as possible. The IANA is a respected organization which has often succeeded at finding consensus within the Internet community over the years. Though there had been controversy over the IANA role in an Internet Society process to address domain name issues during the previous year, IANA was certainly capable of potentially pulling together a process which might find consensus and therefore there was no reason to discourage them.

When the IFWP process was proposed, I also encouraged its organizers. When the IANA group phoned me late in June and asked my opinion about the IFWP process, I encouraged them to participate.

As different groups approached me in September, I urged them to speak with each other to try to find consensus.

3. On October 2, in a phone conversation, I did encourage the Department of Commerce to limit the comment period. The stakeholders interested in the DNS had been following the issues all summer and were well aware of the October 1 deadline. There is a very widespread view among these stakeholders, reflected in the public comments, that after years of debate, this process should move forward quickly.

I believed on October 2 and still believe that virtually all those who wished to comment would be able to do so in the ten day period provided for public comments. We have not received a significant number of requests to extend the period for comment. Assuming that ICANN and the Commerce Department reach an agreement, there will be opportunity for public comment on it before it proceeds.

visit to Tokyo when he was part of a group of Internet experts invited by the U.S. embassy to have a breakfast meeting with me at the embassy. I did not discuss his potential board nomination with him.

I have known Esther Dyson for many years and frequently meet her when we are asked to speak at the same *fora*. I did not suggest her for this board. She approached me at a meeting in late August and indicated that she had been asked if she would be interested in serving on the board. She asked my opinion about whether the new organization would be significant. I indicated that the new organization would play an important role but made clear that no decision had been made as to whether the ICANN proposal would in fact go forward.

I would be pleased to meet with you and/or your staff to discuss these matters further. In particular, I would be happy to discuss whether there is any additional information or documentation you require.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ira C. Magaziner', with a stylized, flowing script.

Ira C. Magaziner
Senior Advisor to the President
for Policy Development